Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

F 7 1997

In the Matter of	)	
	)	MM Docket No. 96-197
Newspaper/Radio Cross-Ownership	)	
Waiver Policy	)	
	)	

DOCKET FILE COPY ORIGINAL

COMMENTS OF

Black Citizens for a Fair Media,
Center for Media Education,
Chinese for Affirmative Action
Communications Task Force,
Hispanic National Bar Association,
League of United Latin American Citizens,
Minority Media Telecommunications Council,
National Association for Better Broadcasting,
NOW Legal Defense and Education Fund,
Office of Communication of United Church of Christ,
Philadelphia Lesbian and Gay Task Force,
Telecommunications Research and Action Center,
Washington Area Citizens Coalition Interested in
Viewers' Constitutional Rights,
Wider Opportunities for Women,
Women's Institute for Freedom of the Press

Of Counsel:

Tom Mullooly
Sam Halpern
Law Student Interns
Georgetown University Law Center

Karen M. Edwards, Esq.
Angela J. Campbell, Esq.
Georgetown University Law Center
Institute for Public Representation
600 New Jersey Ave., NW, Ste 312
Washington, D.C. 20001
(202) 662-9535

Andrew Jay Schwartzmann, Esq.
Gigi Sohn, Esq.
Joseph S. Paykel, Esq.
Media Access Project
1707 L Street, N.W. Suite 400
Washington, D.C. 20036
(202) 232-4300

February 7, 1997

No. of Copies rec'd 0+6
List ABCDE

SUMMARY

Black Citizens for a Fair Media et al. believe that the Commission's newspaper/radio cross-ownership restriction, and the relatively strict waiver policy currently enforced, serve the public interest well and continue to be the most effective way to protect diversity of viewpoint in local markets. While we do not oppose the Commission adopting an objective waiver standard, we recognize that the recent elimination of national ownership limits for radio and the ensuing trend toward consolidation and concentration of ownership place the diversity values that the rule protects at risk. Therefore, strict application of the cross-ownership restriction is more important than ever. Equally important is our concern that any substantial relaxation of the newspaper/radio cross-ownership waiver policy will increase market entry barriers for small businesses, especially those owned by minorities and women.

Assuming that the Commission decides to adopt a presumptive waiver policy, it should maintain a strong presumption against granting waivers. Commenters propose an objective standard that would only permit waivers of the newspaper/radio cross-ownership rule in the most competitively robust and diverse markets. We urge the Commission to adopt a market rank/independent voice standard, place limits on the number of cross-owned properties a licensee can own, and condition waivers on the licensee's promise of specific and quantifiable public interest benefits. Specifically, under our proposed waiver policy a waiver would only be granted if:

(a) Market rank/independent voice — The waiver is sought in one of the top 25 markets, and if it were granted, 30 independently-owned and controlled broadcast voices would remain in the market; and

(b) Ownership limit — Post-waiver, the licensee would own no more than one AM station, one FM station, and one daily newspaper in any local market; and

(c) Offsetting benefits — The waiver applicant has demonstrated specific and quantifiable public interest benefits that would offset the loss of diversity and the Commission has affirmatively determined that the loss of diversity will likely be offset.

We believe that our proposed waiver standard will be easy to administer, will allow the FCC to distinguish meritorious waiver requests, and will protect local diversity of viewpoints.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter	)	MM Docket No. 96-197
Newspaper/Radio Cross-Ownership Waiver Policy	)	

COMMENTS OF

BLACK CITIZENS FOR A FAIR MEDIA ET AL.

Black Citizens for a Fair Media, Center for Media Education, Chinese for Affirmative Action, Communications Task Force, Hispanic National Bar Association, League of United Latin American Citizens, Minority Media Telecommunications Council, National Association for Better Broadcasting, NOW Legal Defense and Education Fund, Office of Communication of the United Church of Christ, Philadelphia Lesbian and Gay Task Force Telecommunications Research and Action Center, Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights, Wider Opportunities for Women, Women's Institute for Freedom of the Press (Black Citizens et al.) hereby submit comments in response to the Commission's Notice of Inquiry, Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197, (released October 1, 1996) (the Notice).

Black Citizens et al. are public interest organizations representing the interests and viewpoints of thousands of mass media audience members.[1] These

---

[1] **Black Citizens for a Fair Media** has been an active participant before the Commission, the Courts and the Department of Justice on communications issues for more than 30 years.

The **Center for Media Education** (CME) was founded in 1991 to improve the quality of electronic media on behalf of children, families, nonprofit groups and the general public. To carry out its mission, CME engages in a variety of activities, including public education, research, advocacy and outreach to the press.

Founded in 1969, **Chinese for Affirmative Action** (CAA) is a voluntary membership organization supported by tax-exempt organizations dedicated to promoting equal opportunities for Asian Americans and other racial minorities. CAA has worked with members of the broadcast industry to promote employment opportunities and to advocate an accurate portrayal of Asian Americans in the mass media.

The **Communications Task Force** was founded in the mid-1970's and is comprised of lawyers, consultants, broadcasters, government employees, journalists and corporate executives involved in the telecommunications field. The Task Force works to promote equal employment opportunity, diversity in ownership and balanced program content in the telecommunications industry.

League of United Latin American Citizens (LULAC), chartered in 1929, is the oldest and largest national Hispanic membership organization with over 100,000 members throughout the country. Its objectives are to protect and defend the civil rights of all Americans, and to improve the quality of life for all Americans. LULAC has often appeared before the FCC to vindicate the rights of minorities, particularly Hispanics, who are denied full enjoyment of their constitutional rights.

Minority Media and Telecommunications Council (MMTC) is a non-profit organization that focuses on minority advancement in communications. Formerly known as the Minority Ownership Litigation Fund, and then the Minority Ownership and Employment Council. MMTC has had a long-standing interest in fostering minority media ownership.

National Association for Better Broadcasting is a Los Angeles based organization dedicated to furthering public involvement in, and access to, the media in an effort to obtain qualitatively and quantitatively more responsive programming, consistent with the public interest standard and the first amendment.

NOW Legal Defense and Education Fund (NOWLDEF) is a non-profit public interest law firm committed to securing and protecting women's right to be free from discrimination. Founded in 1970 by members of the National Organization of Women, NOWLDEF is an independent organization that has used litigation, legislation and public education to promote women's equality Since its inception NOWLDEF has had radio listeners and newspaper readers have a strong interest in receiving information, ideas, perspectives, and viewpoints from diverse sources. Access to

---

a particular interest in promoting women's involvement in media and communications. In the 1980's, NOWLDEF's Media Project campaigned for greater representation of women in media outlets; currently, NOWLDEF monitors, and when necessary, initiates litigation, to ensure women's access to "non-traditional"employment.

For the past 25 years, the **Office of Communication for the United Church of Christ** (UCC) has been a stalwart civil advocate on behalf of the public interest. UCC represents individuals traditionally disenfranchised from the electronic media: the elderly, the disabled, low-income individuals, and minorities.

The **Philadelphia Lesbian and Gay Task Force** is a civil and human rights advocacy organization formed in 1978. Its statewide research efforts in discrimination and violence, as well as its negotiations in public policy, focus on civil rights, mass media equity and education equity goals on behalf of nearly one million gay and lesbian people in Pennsylvania. Since 1989, the Task Force has been extensively involved in mass media research as well as women and minority coalition efforts to challenge Philadelphia broadcast licensees for the consistent under-representation, marginalization, and devaluation of women and racial and ethnic minorities in both programming and employment.

Telecommunications Research and Action Center (TRAC) is a non-profit, tax-exempt organization dealing with telecommunications issues. With a membership of about 1,000 people, TRAC operates a strong advocacy program based on opposition to consumer access line charges, an interest in local measured service, and a generally pro-regulatory position.

Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights (WACCI-VCR) is a non-profit organization which seeks to promote diversity of ownership and employment in the mass media for the benefit of all Americans, and to protect expression of diverse viewpoints.

Wider Opportunities for Women (WOW) is a national women's employment organization that works to achieve economic independence and equality of opportunity for women and girls. For nearly 30 years, WOW has helped women learn to earn, with programs emphasizing literacy, technical and nontraditional skills, and career development. WOW also leads the Women's Work Force Network, which is comprised of over 500 independent women's employment programs and reaches more than 300,000 women each year.

The **Women's Institute for Freedom of the Press** (WIFP) is a network of some 800 women who work in the media, or are concerned about media issues. Founded in 1972, WIFP uses education, research and publishing to promote equality of public access to the media, and citizens' rights to freedom of the press in all forms of media.

such information facilitates informed participation in the affairs of their local communities and the nation.

The Commission initiated this proceeding to determine what changes, if any, should be made to its newspaper/radio cross-ownership waiver policy.[2] The Notice specifically queries whether the Commission should adopt an objective standard against which requests for waiver will be measured.[3] While Black Citizens et al. does not object to the Commission adopting a more objective waiver standard, we believe that the Commission's current waiver policy has served as an important bulwark in protecting local diversity. More important, we recognize that the recent elimination of national ownership limits for radio and the ensuing trend toward consolidation and concentration of ownership place the diversity values that the rule protects at risk and makes the waiver policy more important than ever.

Parts I through III of these comments demonstrate that, should the Commission choose to alter its waiver policy, only limited changes are warranted. Parts IV and V propose an objective waiver standard that will be easy to administer, allow the FCC to distinguish meritorious waiver requests, and thereby protect local diversity.

---

[2] Notice at ¶ 9.

[3] Notice at ¶10.

I. The Current Waiver Policy to the Newspaper/Radio Cross-Ownership Restriction Serves the Public Interest Well.

As the Notice acknowledges, the daily newspaper/radio cross-ownership rule has long reflected Congress' and the Commission's judgment that routinely "granting a broadcast license to an entity in the same community as that in which the entity also publishes a newspaper would harm local diversity."[4] The strict application of this rule has successfully protected diversity of viewpoint in many communities, which today enjoy a more vigorous market of diverse and competitive sources than they would have absent the restriction.

A. The Cross-Ownership Rule Has Been and Continues to Be the Most Effective Way to Protect Local Diversity.

It is uncontroversial that "diversity of viewpoints from antagonistic sources is at the heart of the Commission's licensing responsibility."[5] However, other commenters will likely disagree about what diversity means and how it can best be achieved. Some commenters may even offer the Commission evidence that radio

---

[4] Notice at ¶3, note 6.

[5] Multiple Ownership of Standard, FM and Television Broadcast Stations, Second Report and Order, 50 FCC 2d 1046, 1079 (1975)("Second Report and Order"), recon., 53 FCC 2d 589 (1975), aff'd sub nom (noting "[t]he multiple ownership rules rest on two foundations: the twin goals of diversity of viewpoints and economic competition. The Commission has a responsibility to consider various aspects of the qualifications of licensees or applicants, among them the question of multiple ownership.") See also FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 797 (1978)(quoting Second Report and Order, 50 FCC 2d at, 1079-80)(stating, "it is unrealistic to expect true diversity from a commonly owned station-newspaper combination. The divergency of their viewpoints cannot be expected to be the same as if they were antagonistically run.").

stations currently offer widely diverse programming and program formats and will conclude that the Commission is unnecessarily concerned about diversity.[6]

The Commission, however, has long recognized the importance of distinguishing between diversity of programming, and diversity of viewpoints and sources accomplished through diversity of ownership.[7] As the Commission noted in 1975, when it cited the potential dangers of concentrated ownership:

> The significance of ownership from the standpoint of "the widest possible dissemination of information" lies in the fact that ownership carries with it the power to select, to edit, and to choose the methods, manner and emphasis of presentation, all of which are a critical aspect of the Commission's concern with the public interest.[8]

---

[6] Even the Notice implies that one way to view diversity is in terms of "increased dissemination of news and information in the relevant local market." Notice at ¶9.

[7] See e.g. NewCity Communications of Massachusetts, Inc., 10 FCC Rcd 4985, 4990 (1995)(stating "ownership diversity is preferred as a means of furthering our goals of promoting viewpoint diversity and competition.")

The Commission has stated that three kinds of diversity are "integral to the ultimate goal of providing the public with a variety of viewpoints:" *viewpoint diversity* achieved through structural regulations including the ownership restrictions; *outlet diversity* which refers to a variety of delivery services; and *source diversity*, which refers to ensuring a variety of program producers and owners. Further Notice of Proposed Rulemaking, 10 FCC Rcd 3524, 3549 (1995)("1995 Further Notice").

The FCC has also questioned the conclusion that greater concentration of ownership produces more diverse content. "While this model may, indeed, promote diversity of entertainment formats and programs, we question whether it would act similarly with regard to news and public affairs programming." 1995 Further Notice, 10 FCC Rcd, at 3551.

[8] Second Report and Order, 50 FCC 2d at 1050, quoting Associated Press v. United States, 326 U.S. 1, 20 (1945).

The FCC's public policy judgment that separate ownership is the best way to achieve viewpoint diversity has changed little since 1975. In the 1995 review of its broadcast ownership policies, the Commission acknowledges that:

> without diversity of outlets, there would be no real viewpoint diversity—if all programming passed through the same filter, the material and views presented to the public would not be diverse. Similarly, the Commission has felt that without diversity of sources, the variety of views would necessarily be circumscribed.[9]

Diverse programming can be accomplished by a single owner programming many media outlets. However, diversity of viewpoints will always be threatened by such common ownership. A common owner has the power to control and manipulate the information released through its outlets. This potential for the common owner to exercise editorial control threatens the First Amendment goal of the "widest possible dissemination of information."

The Notice also acknowledges that newspapers have a powerful presence in their local markets and queries whether that distinguishes the newspaper/radio cross-ownership rule.[10] We believe that it does. Newspapers and television are the most important tools for shaping public opinion on local issues. Local news, public affairs, and issue-responsive programming enable citizens to become fully informed and strengthen our participatory democracy. Protecting diversity of viewpoints through separate ownership at the local level must remain a central mission of the Commission.

---

[9] 1995 Further Notice, 10 FCC Rcd, at 3550.

[10] Notice at ¶9.

B. The Mandate of the Federal Communications Commission in this Proceeding is Narrowly Proscribed.

As a preliminary matter, Black Citizens et al. note that the scope of this proceeding is extremely narrow. The Notice never once contemplates changes to the cross-ownership rule; instead it focuses on possible alterations to the policy under which waivers of that rule are granted. Adopting a waiver policy so flexible that it undercuts the purpose or success of the rule is beyond the scope of this proceeding. Only limited changes to the waiver policy are permissible if the Commission is to avoid a de facto repeal of the rule.

The Notice also states that "while the Commission now clearly has the authority to reevaluate its waiver policy for newspaper-broadcast combinations it is without specific guidance on whether or how that authority should be exercised."[11] Black Citizens et al. do not here challenge the Commission's authority to amend its waiver policy. However, we believe that the congressional intent expressed both in the 1994 Appropriations Act and more recently in the Telecommunications Act of 1996 ("1996 Act") provide the Commission ample guidance.

First, the 1994 Appropriations Act prohibited the FCC from using appropriated funds to alter the daily newspaper/radio cross-ownership rule, but allowed the FCC to amend its policy for evaluating waivers of the rule.[12] The Act's

---

[11] Notice at ¶7.

[12] Department of Justice and Related Agencies, Appropriations Act, 1994 Pub. L. No. 103-121, 107 Stat. 1167 (1993).

legislative history described Congress' intent regarding modifications to the waiver policy:

> [I]t may now be appropriate to permit the FCC to establish a more liberal policy with respect to waivers permitting cross-ownerships of newspapers and radio stations. . . . The conferees intend that the new policy allow such waivers to be granted only in the top 25 markets where at least 30 independent broadcast voices remain in the market after the transfer is completed. . . . The conferees intend that the FCC also make a separate affirmative determination that such a transfer is otherwise in the public interest, based upon the applicants' showing that there are specified benefits to the service provided to the public sufficient to offset the reduction in diversity which would result from the waiver.[13]

Therefore, while the Commission has the discretion to change its waiver policy, this language provides a clear and unambiguous expression of Congress' intent regarding the substance of any change.[14]

---

[13] H.R. Conf. Rep. No. 103-293, 103rd Cong., 1st Sess. 40 (1993).

[14] Unlike many instances where Congress enacts substantive legislation in a provision to an appropriations act, here Congress' intent is unambiguous. In the 1995 Appropriations Act, Congress inserted a provision identical to the one found in the 1994 fiscal year appropriation granting the Commission authority to amend its waiver policy. Department of Justice and Related Agencies, Appropriations Act, 1995 Pub. L. No. 103-317, 108 Stat 1724, 1737-38 (1994). Although Congress did not repeat the legislative history from the previous year, Congress' prior expression of intent was valid then and still deserves deference today.

The Supreme Court reasons in Metro Broadcasting v. FCC, that "[a]fter Congress has legislated repeatedly in an area of national concern, its Members gain experience that may reduce the need for fresh hearings or prolonged debate when Congress again considers action in that area." 497 U.S. 547, 572 (1990)(citing Fullilove v. Klutznick, 448 U.S. at 502-503 (1980)). It was unnecessary for Congress to repeat its intent in 1995, when it had articulated its intent regarding an identical provision in the prior year.

The Commission notes in ¶ 7 of the Notice that Congress did not include a similar provision in the 1996 Appropriations Act. However, this omission does not undermine prior statements of Congressional intent. While sometimes ambiguity arises in the area of legislative silence, where Congress makes its intent clear in legislation and accompanying conference reports over a period of years, a solitary omission in the

The Commission recently recognized the value of this expression of Congress' intent when it approved the merger of the Walt Disney Company and Capital Cities/ABC. It specifically referred to the "clarification language" which Congress included in the conference report accompanying the 1994 Appropriations Act.[15] Moreover, in refusing to grant the permanent waivers sought by Disney, the Commission highlighted the paucity of Disney's public interest showing as compared to Congress' standard.[16]

In addition, the legislative history of the 1996 Telecommunications Act provides further guidance and should caution the Commission against broad changes to the waiver policy. The fact that Congress explicitly considered and rejected a repeal of the newspaper/radio cross-ownership rule confirms the

---

current year is inconclusive and, therefore, has no significant effect. See e.g., Southern Packaging and Storage Co. v. United States, 588 F. Supp. 532, 549 (D.S.C. 1984).

Absent clear Congressional language to the contrary, Congress' last positive expression of intent regarding the proper implementation of the waiver policy deserves the highest degree of deference. As the Court states in Metro, "[l]imiting our analysis to the immediate legislative history of the appropriations Acts in question 'would erect an artificial barrier to [a] full understanding of the legislative process....' One appropriate source is the information and expertise that Congress acquires in the consideration and enactment of earlier legislation." Id.

[15] In re Applications of Capital Cities/ABC Inc., Memorandum Opinion and Order, 11 FCC Rcd 5841, 5889 (1996)("Capital Cities Order").

[16] After examining claims including administrative and economic efficiencies and the continuation of minority training programs, the Commission stated that it did not find "Disney's public interest offerings sufficient to tip the balance in favor of granting [the] waivers." Capital Cities Order, 11 FCC Rcd at 5893.

continued importance of the rule.[17] While Congress appeared willing to tolerate the risks associated with increasing the local ownership limits for radio and repealing limits on national ownership of radio, it drew the line at newspaper/radio cross-ownership. Congress apparently had a specific vision where a number of large media corporations would compete in a market in part defined by the cross-ownership restriction. Nothing in the 1996 Act even refers to, much less alters, its previous statements that careful scrutiny of waiver requests is an important safeguard for preserving and fostering diversity of viewpoints.

II. Changes in the Media Landscape Since the 1975 Adoption of the Newspaper/Radio Cross-Ownership Rule Make it More Important, Not Less.

A. Because Single Entities May Now Own Increased Numbers of Stations at National and Local Levels, Cross-ownerships Can Do Even More Harm to Diversity Now than When the Rule Was Adopted.

The 1996 Telecommunications Act lifted a significant number of ownership limitations, which has and will continue to result in greater concentration in ownership at the local level. Prior to the passage of the 1996 Act, a party could only own one AM and one FM station in a single market without seeking a waiver. Now, subject to limits imposed by antitrust laws, an owner can hold up to eight radio stations in a local market.[18] The fear that initially prompted adoption of the

---

[17] 141 Cong. Rec. E-1571 (August 1, 1995).

[18] Telecommunications Act of 1996, §202. Entities can own a maximum of eight stations in markets with 45 or more stations, seven stations in markets with 30-44 stations, six stations in markets with 15-29 stations, or five stations in markets with 14 stations or fewer. Id.

newspaper/radio cross-ownership restriction—that the local station might own the daily newspaper— should be exponentially increased by the prospect of a conglomerate owning eight local radio stations and a daily newspaper. Combining the power of a daily newspaper with control over a significant portion of the radio spectrum would allow that owner to control the debate on many issues in the local community. It is easy to see how newsworthy events that are unpopular with the group owner could go unreported and how viewpoints unacceptable to or even critical of that owner might be suppressed.

The newspaper/radio cross-ownership restriction plays the vitally important role of preventing large media corporations from dividing up local territories as secure, protected enclaves, similar to the zones of non-competition in telephony previously maintained by the Baby Bells. Apparently, Congress envisioned a marketplace where media corporations would compete not only on the national level, but—as a result of strict enforcement of the newspaper/radio cross-ownership rule—on the local level as well.

Local competition is fostered because, in the absence of an easily obtainable waiver, the rule will force media corporations desiring to grow to venture into new local markets. For each such market, they will have to decide between becoming a major radio voice with numerous stations, or a major newspaper voice with no radio stations.[19] Local markets would, therefore, be served by a diverse group of

[19] This may lead to a process of station swapping, where a conglomerate who decides to become a major newspaper voice in one market might swap some of its radio stations in that market in exchange for radio stations in a different local market.

national and local media corporations and dissemination of diverse viewpoints would be encouraged. Without the rule and a strict waiver policy, widespread local competition among national media corporations is unlikely to occur.

1. The Commission should not jettison its current waiver policy when the radio market is in so much flux after adoption of new local ownership limits.

A cautious approach to relaxing the waiver policy is further justified by the fact that the communications market, especially the radio market, is in flux.[20] Thus far, the 1996 Act has not produced the vigorous competition and robust diversity that was promised.[21] In addition, it is unclear whether the sweeping changes in

---

Encouraging corporations to swap radio stations or newspapers with other corporations in order to comply with cross-ownership rules on the local level is appropriate. Station swapping is already occurring as a result of the 1996 Telecommunications Act. See, e.g., Elizabeth A. Rathbun, Station Swaps Highlight Week in Trading; Broadcast Groups' Station Trades, vol.126, Broadcasting and Cable, no. 26, June 17, 1996, at 11. The corporations do not lose value in swaps, and local diversity can benefit. While the corporation may not benefit from all the economies it might receive were it able to own more outlets in one market, so long as other corporations are also not allowed such economies, the field is level and competition can flourish.

[20] See, e.g., Ron Weiskind and Adrian McCoy, Increasing Frequency: Since the Telecommunications Act, Players and Stations In the Pittsburgh Market Seem to Turn Over Faster Than You Can Stab Your Seek Button, Pittsburgh Post-Gazette, Nov. 17, 1996, at C2.

[21] Bill Ryan, the president and CEO of Post-Newsweek Stations comments that "[t]he [1996] telecom bill was supposed to create more and more competition. It hasn't. It promised to create more and more jobs. It hasn't." David Hatch, Telecom law fails the test, Electronic Media, Feb. 3, 1997, at 31. "Allowed to grab more properties, large television and radio station groups began gobbling up the media landscape. While the big got bigger, small independent radio owners began to flee big markets. 'A lot of good broadcasters decided they didn't want to play under the new order and left the industry,' said longtime industry observer Jim Duncan, president of Duncan's American Radio." Id. at 1. "Some of the law's critics have dubbed it the 'Big Owners Benefit Act of

policy embodied in the 1996 Act will ever lead to meaningful competition among national media corporations or, even if some competition results, how the policy changes will affect the diversity of local voices.

As the Commission is well aware, in the year following the passage of the 1996 Act a flood of mergers, consolidations, station swaps and sales have occurred. Certainly, this has been true of radio where, for example, Clear Channel Communications now owns more than 100 stations, making it second only to Westinghouse (which itself owns 77 independent radio stations and multiple stations in the nation's top ten radio markets) in terms of audience reach; Chancellor Broadcasting Co., with the purchase of 12 radio stations from Colfax Communications, boasts 53 stations in 15 markets; and Gannett's merger with Multimedia Entertainment yielded a media portfolio including 92 newspapers, 13 radio stations, five television stations, and a cable arm with subscribers in five states.[22] There has been similar widespread consolidation in television, cable, and telephony with the creation of Time Warner/Turner, the world's largest media company, and Bell Atlantic/Nynex, the largest regional telephone company in the

---

1996.' They point especially to radio." Id. at 31.

[22] Neil Hickey, So Big: The Telecommunications Act at Year One, Colum. Journalism Rev., January-February 1997, at 24 ("So Big"). Not surprisingly, notes Neil Hickey, "virtually all the coverage of this unprecedented deluge of consolidations appeared on the business pages of newspapers (if it appeared at all) and on cable channels (CNBC, CNNFN) devoted to business news, and thus flew under the radar of most Americans." Id. at 25.

United States since 1987.[23] In such a setting, when considering relaxing important safeguards that protect diversity of viewpoint and competition, wisdom counsels caution.

2. Increased concentration of media ownership and greater pressure for profits has not and will not lead to viewpoint diversity.

Some might argue that changes in the communications industry that have led to increased concentration of media ownership have increased diversity and the amount of information available, ultimately benefiting the average consumer. We disagree.

As we discussed in section 1.A. above, the argument that concentrated ownership leads to diversity rests on the faulty assumption that the goal of the newspaper/radio cross-ownership rule is diversity of programming, when the rule was actually designed to promote diversity of viewpoint. The reality is that if a particular local matter or issue is distasteful or contrary to the owner's self-interest, that owner can force all of its outlets to ignore the issue or spin it as the owner prefers. Three recent examples illustrate this potential for self-censorship and suppression of certain viewpoints.

First, as the Commission deliberated over whether incumbent television licensees should automatically receive additional spectrum or whether auctions should be held, the broadcast media were conspicuously absent from the debate. Were it not for newspapers, the public would not have been adequately informed. A

---

[23] Id.

similar story can be told about the continuing controversy over television ratings. Again, much of the debate and all of the investigative reporting and conscientious journalism has occurred in the print media. Finally, media coverage of itself is a particularly strong example of the threat of self-censorship. When Time Warner announced the acquisition of Turner Broadcasting, the CEOs of both companies were interviewed on CNN by Larry King. King was widely criticized in journalistic circles for his "softball" interview.[24]

In addition, the market incentives facing common owners and their quest for increased economic efficiency also thwart viewpoint diversity. Consider, for example, the trend toward fewer and smaller news departments on the television network level. As the parent corporations of news divisions have grown, the size of the news staffs have shrunk. This trend has occurred even as news programs account for a larger percentage of the prime time programming line-up. Networks have responded, in general, by filling the air with more commentary and more recycled stories—not with more news.[25] It is only the addition of new competitors that has added to the overall number of news reporters actually gathering news.

---

[24] *Time* magazine editor Walter Isaacson candidly admits that "sprawling corporations owning news organizations. . .raises the specter of conflicting interests and a less diverse babble of journalistic voices. . . . [Individual press baron[s] can be insidious meddlers." Walter Isaacson, To Our Readers, Time, Oct. 21, 1996, at 20.

[25] See, e.g., Richard Zoglin, The News Wars; On TV and Radio, in Print and Over the Internet, News is Everywhere. But Are We Better Informed or Just Overwhelmed?, Time, Oct. 21, 1996, at 58 (arguing that the current explosion of news has not been accompanied by an increase in news gathering).

This national trend will likely be repeated at the local level as concentration of ownership increases and especially if waivers of the cross-ownership rules are routinely granted. A parent corporation will have the incentive to reduce or consolidate the news staffs at its commonly-owned radio stations and newspapers. The result will be less news and fewer diverse viewpoints at the local level. The best safeguard against this trend is for the FCC to encourage the separate ownership of radio and newspapers, which will inevitably lead to more journalists on the streets doing actual news gathering and reporting diverse viewpoints.

B. The Arguments Which Helped Justify a Relaxation in Local Ownership Limits in Radio Do Not Apply in the Cross-Ownership Context.

One of the arguments which helped justify raising the limits on the number of radio stations a common owner could control in a local market was that consumers might be better served.[26] Proponents reasoned that in a local market where eight radio stations were controlled by separate owners, each station would likely compete to find the broadest possible audience. By contrast, common owners would have incentives to target each station's programming to a different segment of the audience and more choices would be available to listeners.

Again, this argument misses the distinction between diversity of programming and viewpoint. Equally important, even if that argument was persuasive when setting radio ownership limits, it does not apply to the radio/newspaper cross-

---

[26] See e.g., S. Rept 104-23, 104th Cong., 1st Sess., at 65 (additional views of Senator Burns).

ownership rule. Even if an owner had a reason to broadcast a full spectrum of choices for consumers over its eight radio stations, its newspaper would not be a ninth voice to further increase that spectrum. Rather, the newspaper is a totally different service which in practice will seek a mass audience. The relaxation of the cross-ownership rule will not increase diversity of programming along this line of reasoning.

C. New Technologies Do Not Justify a Relaxation of the Commission's Protection of Diversity.

The Notice further questions whether the presence and growth of non-broadcast media should affect waiver policy.[27] The Commission will no doubt be told by other commenters that the explosion of information available from the Internet, DBS, cable and other video and information sources has made protecting diversity of viewpoints through diverse ownership unnecessary. Both the relative infancy of these technologies and reality of cross-ownerships in these media undermine this argument.

New technologies may increase the "noise" level without adding significant local viewpoints. Most of the new technologies are not locally based and do not provide news or information on local issues. For example, DBS providers are prohibited from offering some local programming. DBS customers who can receive the signal of network affiliates—i.e., the vast majority of subscribers—must get network programming through traditional over-the-air broadcasts.

---

[27] Notice at ¶12.

Although cable television and the Internet may have the potential to facilitate antagonistic debate on local issues, they do not now serve that purpose to any significant degree. On cable, PEG access and leased access, the two avenues most likely to include local content, are underutilized. Even if the Internet was a good source of local programming, it is not an independent media voice. Many of the online news services are currently owned by the major newspapers like The Washington Post and The New York Times.[28] These services provide little original material and generally update their Web sites from news agencies.[29] Far from creating an independent media voice that decreases the concern about overreaching by cross-owned newspaper/radio combinations, the Internet may increase the power of newspapers to reach a mass audience and extend the newspaper franchise.

In addition, these new technologies, specifically the Internet and DBS, fail to reach large segments of the community. The Internet and DBS simply do not have the same mass audience capacity that newspapers or radio do. First, the Internet is not a medium of mass communication, but a narrowcast medium that targets particular persons. Access to the Internet is costly and using the Internet requires a level of technical expertise that not everyone will attain. DBS also requires

---

[28] Laurence Zuckerman, Don't Stop the Presses; Newspapers Balk at Scooping Themselves on Their Own Web Sites, N.Y. Times, Jan. 6, 1997, at D1.

[29] Id.

significant purchases and monthly payments before consumers can participate.[30] Conversely, simply turning on a radio or buying the daily newspaper has been and will continue to be within the reach of the vast majority of local citizens. The media outlets which can reach all such citizens are of much greater importance when it comes to the "widest possible dissemination of information" on local issues of importance in a participatory democracy.

III. Entry Barriers for Minorities and Women Remain, and Will Be Increased by Any Substantial Relaxation of the Current Waiver Policy.

The Notice queries in ¶20 whether relaxation of the waiver policy will increase barriers to entry for prospective radio broadcasters or newspaper owners. Black Citizens et al. believe that substantial barriers to entry for small businesses, especially minorities and women, are endemic to the current broadcast industry environment and that relaxing the cross-ownership waiver policy would significantly increase those barriers.

It is uncontroversial that entry barriers for minorities and women still exist. For example, although the overall percentage of minority-owned, commercial broadcast stations remained fairly constant at just below three percent between 1993 and 1995, the years for which statistics are readily available, acquisitions of

[30] At a minimum, subscribers to DBS must purchase or lease a satellite dish and a decoder to decompress the programming signals. Although decoder prices have dropped significantly in the last year, the average initial investment still hovers at approximately $200.